



**Town of Trumbull
Economic and Community Development Commission**

January 5, 2012

VIA ELECTRONIC MAIL ONLY

Ralph Sather ([REDACTED])
Jack Berg ([REDACTED])
James Abraham ([REDACTED])
Thomas Ginis ([REDACTED])
Beryl Kaufman ([REDACTED])
Evelyn Zmary ([REDACTED])
William Haberlin ([REDACTED])
Gary Bean ([REDACTED])

Dear Commissioners:

Over the past two weeks, several procedural concerns have been raised regarding the activities of the Commission. Specifically, the Town Clerk and the First Selectman have announced several conclusions they reached regarding the Commission's activities under the Connecticut Freedom of Information law, Town Charter and Robert's Rules of Order.

I believe that the Commission should have as much information as possible so that we make informed, reasoned and balanced decisions in responding to those concerns. Therefore, since the concerns were first raised I have attempted to research the underlying issues. I had originally planned to offer my conclusions well before our regular January meeting, but the Special Meeting organized by the First Selectman required me to provide this information on relatively short notice. I encourage all of the Commissioners to review the letter before this evening's meeting in order to assist with our decisionmaking.

Summary of Conclusions

Based on the information currently available, it appears that:

1. There is no basis to reasonably conclude that the prior actions and votes of the Commission have been or will be necessarily nullified by reason of the violation, if any, of the FOI law.
2. The Commission has acted in accordance with both the Town Charter and Robert's Rules of Order with regard to its prior meetings, including the December 15, 2011 meeting.
3. A new vote for 2012 officers and schedule of meetings could be inconsistent with the Town Charter.
4. The Commission should renew its focus of being an independent, nonpolitical body.

Analysis and Discussion

Town Clerk's December 16, 2011 Letter

On December 16, 2011, I received a letter from the Town Clerk which, in turn, I forwarded to the existing Commissioners (despite having requested contact information from the First Selectman's office on December 16 for the new Commissioners, no information was provided until January 3). A copy of the letter is attached for the convenience of all of the Commissioners.

The letter came as a surprise to both myself as well as other Commissioners as there had been no previous concerns raised questioning the Commission's compliance with the Connecticut Freedom of Information law ("FOI Law").¹ Setting aside the unanswered questions of how the Town Clerk came to review her records and the manner in which she chose to first raise those issues with the Commission, a focus on the factual portions of her letter rather than the conclusions reached warrants further consideration.

After a December 19, 2011 letter from me requesting additional information, the Town Clerk responded by highlighting that, for the period of 2010-2011, there were significant gaps in

¹ The tone of the letter was also unusual in that the Town Clerk seems to have exceeded her authority in making legal conclusions – specifically her summary conclusion that, "all of the undocumented meetings are illegal, as are their votes." I am not aware of any authority by which the Town Clerk may offer legal opinions in her official capacity. The tone of the letter was, in my opinion, even more unusual given the apparent involvement of the Town attorneys in sending the letter based on their prompt e-mail reply (also attached).

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her records of agendas and minutes from the Commission. Copies of both letters are attached. After discussion with several Commissioners, it seems that agendas and minutes may not have been regularly supplied directly to the Town Clerk during this time period.

Before drawing any ultimate conclusions, however, a first question to address is whether the FOI law was violated by a failure to provide minutes and agendas directly to the Town Clerk. Based on my investigation, there is a question as to whether the FOI law was, in fact, violated. A number of Commissioners conveyed their understanding that submitting agendas and minutes to Patricia Zablocky who, in turn, posts the documents on the Town website, was sufficient to comply with the FOI law. Given the fact that agendas and minutes were produced and routinely provided to Ms. Zablocky who, in turn, regularly posted them on the website clearly evidences a good faith effort on the part of the Commission to comply with the FOI law.

In the course of performing her duties, Ms. Zablocky has also advised the heads of Town Commissions that, in order to comply with the FOI law, certain information should be provided directly to her. (E-Mails dated December 16 and 31, 2011 are attached). Ms. Zablocky's e-mail communications reinforce the prior understanding of the Commission that providing records to Ms. Zablocky satisfied FOI law obligations. Additionally, by the Town permitting Ms. Zablocky to take on the responsibility of collecting information to comply with FOI law obligations, there is an open question as to whether Ms. Zablocky was an agent acting with the actual, or at a minimum the apparent, authority of the Town to compile documents to comply with the FOI law requirements. If so, it is possible that the Commission fully complied with its FOI law obligations by providing agendas and minutes to Ms. Zablocky.

In light of the foregoing, I do not believe one can state with any certainty that the FOI law was, in fact, violated by reason of a failure to provide agendas and minutes directly to the Town Clerk. However, assuming that there was a violation, a second question to address is what, if any, impact such a violation would have on the prior actions of the Commission. Given the fact that agendas and minutes were created, the documents were open to public view on the Town website and the Commission's good faith effort to comply with the FOI law, it seems that the Commission is facing, at most, no more than a technical violation of the FOI law. To that end, Section 1-206(b)(4)(B) of the FOI law is instructive:

Notwithstanding any provision of this subsection to the contrary, in the case of an appeal to the [Freedom of Information] commission of a denial by a public agency, the commission may, upon motion of such agency, confirm the action of the agency and dismiss the appeal without a hearing if it finds, after examining the notice of appeal and construing all allegations most favorably to the appellant, that (A) the agency has not violated the Freedom

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of Information Act, or (B) the agency has committed a technical violation of the Freedom of Information Act that constitutes a harmless error that does not infringe the appellant's rights under said act. [emphasis supplied].²

From the facts discovered so far, therefore, it would seem that the technical type of violation in question would not be cause for invalidating prior actions of the Commission.

Certainly, a conclusion that the prior actions of the Commission are by default invalid because of the claimed violation of the FOI law is not based in a fair reading of the law. As detailed in Section 1-206(b)(2) of the FOI law, the FOI Commission determines remedies for FOI law violations "in its sound discretion." Prior meetings and votes are not simply invalidated as a consequence of any FOI violation. Indeed, in *Board of Selectman of the Town of Ridgefield v. Freedom of Information Commission*, SC 18343 (January 5, 2010), citing several examples where the FOI Commission did not nullify meetings due to insufficient notice, the Court held:

In deciding whether to nullify the results of an improperly noticed meeting, the [Freedom of Information] commission historically has looked to the totality of the circumstances, including whether such a remedy would serve the goals of the act or rectify the real effects of the original denial of notice.

In sum, there is no information at present requiring a conclusion that the prior acts and votes of the Commission are void. To the contrary, it would seem that, at most, there was a technical violation that would involve a remedy, if any, far less severe than the negation of the Commission's prior activities.

The Commission's October 2011 Meeting

In his December 19, 2011 e-mail (attached), the First Selectman asserts that then-Chairman Abraham acted improperly when he stepped down from the Chairmanship. The First Selectman represented that then-Chairman Abraham named an acting chair. As detailed below, this conclusion is inaccurate.

Contrary to the First Selectman's representation, then-Chairman Abraham did not appoint his replacement. Rather, upon notifying the Commission of his intent to resign from the Chair, he suggested that Vice Chairman Kaufman assume the role of Chair and suggested that I be considered by the Commission to replace Vice Chairman Kaufman until the December

² At this point, it is important to note that, to my understanding, no complaint of a FOI violation has actually been made.

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elections could be held. When Vice Chairman Kaufman declined to assume the position of Chair due to time constraints, then-Chairman Abraham suggested that I assume the role of Chair and Vice Chairman Kaufman remain in the office of Vice Chairman.

Then-Chairman Abraham proceeded to ask for the vote of each Commissioner. All Commissioners in attendance (then-Chairman Abraham, Vice Chairman Kaufman, Commissioners Ginis, Wich and Sather and former Commissioners Mizak and Connolly) expressed their agreement to the change in officers. In that a vote was held, and a new Chairman not merely appointed, the concerns raised by the First Selectman appear misplaced.

The Commission's December 2011 Meeting

The First Selectman has raised concerns that the December 15, 2011 meeting was held in violation of the Town Charter and Robert's Rules of Order based on the lack of a quorum. For the reasons outlined below, a quorum appears to have been present at the meeting. Consequently, the meeting and votes taken therein appear valid.

Robert's Rules of Order generally provides that a quorum is a majority of the members of the board or committee unless a different quorum is fixed, among other things, by a rule of the parent organization. Thus, while a majority of a commission would generally constitute a quorum, such is not necessarily the case if there was a rule of the Commission to the contrary.

In the case of the Commission, we have a lengthy past practice of calling meetings to order and conducting business regardless of the attendance of a majority of the Commissioners. Indeed, since April 2010, 33% of the meetings were called to order without a majority of the Commissioners present. In those cases, unless an objection to quorum was made on a particular vote, the Commission proceeded to act based on a majority of those present. Meetings called to order without the presence of a majority of the Commissioners included the December 2010 meeting at which the 2011 officers were unanimously elected.

As further provided in Roberts Rules of Order Newly Revised (RONR), 10th edition, p. 17:

In some organizations a particular practice may sometimes come to be followed as a matter of established custom so that it is treated practically as if it were prescribed by a rule of order. However, if such a practice is or becomes in conflict with the parliamentary authority or any written rule of the organization, and a Point of Order citing the conflict is raised at any time, the custom falls to the ground, and the conflicting provision in the parliamentary authority or written rule must thereafter be

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complied with, unless a special rule of order (or, in appropriate circumstances, a standing rule) is added or amended to incorporate the custom. If there is no contrary provision in the parliamentary authority or written rules, the established custom should be adhered to unless the assembly, by a majority vote, agrees to do otherwise.

At the December 15, 2011 meeting, I called the meeting to order in a manner consistent with what I understand to be the established custom of the Commission, based on the history of the Commission as well as the input of two Commissioners. No points of order or any other objection to quorum was made by any Commissioner. Therefore, it seems that a quorum existed at the December 15, 2011 meeting, that the meeting was properly called to order and that the actions taken by the Commission at that meeting are valid.

The Commission's January 2012 Special Meeting

In light of the above, I believe that at a minimum there is a doubt as to the validity of the conclusions that have been offered by the Town Clerk and the First Selectman and, in turn, that there is reason to believe that the prior actions of the Commission, including but not limited to those at the December 15, 2011 meeting, are valid. Consequently, moving forward with the proposed agenda for the January 5, 2012 Special Meeting and conducting a new vote for the 2012 officers and schedule of meetings may be without basis and inconsistent with the Town Charter.

I respectfully urge each Commissioner to consider the points raised in this letter when considering whether the Commission should move forward with a new vote. My concern has been and continues to be to maintain the integrity of this Commission. To move forward with a new vote based on the information currently available to us would be imprudent.

The Future Direction of the Commission

I would be remiss if I did not express my concerns about the future direction of the Commission. Traditionally, the Commission has operated as an independent, nonpolitical body. I believe this model has several benefits for the Town, including:

1. By leaving politics aside, the Commission is able to work more collaboratively to further the economic development interests of the Town.

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2. By remaining nonpolitical, I believe we have a greater opportunity to gain the respect of and maintain credibility with the local business community in that our interests are purely for the betterment of the Town and not for any partisan concern.
3. By remaining independent, we can provide a valuable resource to the Office of the First Selectman, the Planning and Zoning Commission and the Town. The abilities of the nine Commissioners, who bring varied skills, wisdom and experience to the table, are an asset for the Town.

In order for this model to work successfully, there must be an open, collaborative and professional relationship between the Commission and others with whom it works, including the Office of the First Selectman. Against this backdrop, I am concerned by the nature of the First Selectman's recent involvement with the Commission. I do not believe it is either necessary or productive to list at length in this letter the concerns that several Commissioners have expressed concerning the First Selectman's handling of substantive economic development matters over the past several months. In light of those concerns, however, I am troubled by the comparatively great amount of interest the First Selectman has taken regarding governance and procedural issues of the Commission.

The office of the First Selectman can oftentimes be political in nature. Therefore, to the extent a First Selectman involves himself in the procedural affairs of the Commission, there is an increasing risk that the Commission will lose its independence and, in both operation and perception, become merely an extension of the First Selectman's office. In my opinion, such a model for this Commission would be a disservice to both the Town and the mission we are attempting to fulfill. Going forward, I urge each Commissioner to consider the value to the Town in this Commission remaining an independent, nonpolitical body and encourage the Office of the First Selectman to be open to an independent, professional and collaborative relationship.

Very truly yours,

Scott M. Wich
Chairman, Trumbull Economic and Community Development Commission

cc: Timothy M. Herbst, First Selectman (via e-mail, therbst@trumbull-ct.gov)

TOWN CLERK'S OFFICE
Town of Trumbull
Connecticut

SUZANNE BURR MONACO
TOWN CLERK
(203) 452-5037



TOWN HALL
5866 Main Street
Trumbull, Connecticut 06611

December 16, 2011

Mr. Scott Wich
[REDACTED]
Trumbull, CT 06611

Dear Mr. Wich:

It has come to my attention that the Economic Development Commission, of which you are acting chair, has neglected to file agendas and minutes in my office in accordance with the Freedom of Information Act. Agendas are required to be posted a minimum of 24 hours prior to the meeting. Completed minutes are required within 7 days (including Saturdays and Sundays) at the Town Clerk's office. Votes of each member on all issues shall be reduced to writing. This may take the following form: vote-12-2(Jones, Smith). It may then be assumed that the others voted in the affirmative. The votes must be filed within 48 hours.

This is a serious concern as all of the undocumented meetings are illegal, as are their votes.

Sincerely,

Suzanne Burr Monaco
Trumbull Town Clerk

c: First Selectman
Town Attorneys

From: "Nicola, Robert" <[REDACTED]>
Subject: **RE: Economic Development Commission Concerns**
Date: December 16, 2011 4:14:31 PM EST
To: Suzanne Burr Monaco <sburrmonaco@trumbull-ct.gov>, [REDACTED]
Cc: "Timothy M. Herbst" <therbst@trumbull-ct.gov>

Suzanne – let me know his response if any so we can move this along

From: Suzanne Burr Monaco [<mailto:sburrmonaco@trumbull-ct.gov>]
Sent: Friday, December 16, 2011 3:23 PM
To: [REDACTED]
Cc: Timothy M. Herbst; Nicola, Robert
Subject: Economic Development Commission Concerns

Please see the attached information.
Thank you

Suzanne Burr Monaco
Trumbull Town Clerk
5866 Main Street
Trumbull, CT 06611
203-452-5037



**Town of Trumbull
Economic and Community Development Commission**

December 19, 2011

VIA ELECTRONIC MAIL (sburrmonaco@trumbull-ct.gov) ONLY

Suzanne Burr Monaco
Town Clerk
Town of Trumbull
5866 Main Street
Trumbull, Connecticut 06611

Dear Ms. Monaco:

I am writing in response to your December 16, 2011 letter (attached) addressed to my attention regarding your concerns as they relate to the Economic and Community Development Commission's (formerly known as the Economic Development Commission), hereinafter "the Commission," compliance with the State Freedom of Information law. Your letter is the first notice to the Commission of any concerns of any nature regarding compliance with the Freedom of Information law.

I intend to investigate fully the allegations raised in your letter. To that end, at your earliest convenience, could you provide me with information as to the period of time that you believe the Commission inadequately complied with the Freedom of Information law as well as any other information you may have relevant to the allegations in your letter. Such information will be of great assistance in reviewing and properly responding to your concerns.

Additionally, I have copied Jack Testani, Chairman of the Trumbull Republican Town Committee, and Nancy DiNardo, Chairwoman of the Trumbull Democratic Town Committee, on this letter to provide a full opportunity to collect information that may assist in responding to the concerns raised in your letter.

Lastly, I have attached a copy of an e-mail I received from Robert Nicola. I presume that Attorney Nicola is the Town Attorney to which you sent a copy of your letter and so, in turn, I am copying him on this letter as well as additional communications regarding the issues at hand.

Suzanne Burr Monaco, Trumbull Town Clerk

December 19, 2011

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I will follow-up with a more detailed response to your December 16 letter after I have had an opportunity to fully review the facts and issues raised therein. In the interim, kindly contact me with any questions and best wishes for a happy holiday season.

Very truly yours,

Scott M. Wich

Chairman, Trumbull Economic and Community Development Commission

cc: Timothy M. Herbst, First Selectman (via e-mail, therbst@trumbull-ct.gov)
Robert Nicola, Esq., Town Attorney (via e-mail, [REDACTED])
Jack Testani, Trumbull Republican Town Chairman
(via e-mail, [REDACTED])
Nancy DiNardo, Trumbull Democratic Town Chairwoman (via e-mail,
[REDACTED])

TOWN CLERK'S OFFICE
Town of Trumbull
Connecticut

SUZANNE BURR MONACO
TOWN CLERK
(203) 452-5037



TOWN HALL
5866 Main Street
Trumbull, Connecticut 06611

December 20, 2011

Scott M. Wich ([REDACTED])
[REDACTED]
Trumbull, Connecticut 06611

Dear Mr. Wich:

The Town Clerk's office received an agenda for the January 20, 2011 meeting on January 14, 2011. The Town Clerk's office also received an agenda for the April 16, 2011 meeting for 7:15 pm on April 15, 2011 at 11:48 am.

The office does not have any time-stamped minutes from any other meetings, or other agendas time stamped into the record. Also, a sign-in book is located in the Town Clerk's office for signing in agendas and minutes of each commission with the date. (nothing was entered in 2010, or 2011)

Please check the current Town Charter (adopted 12/8/2011) for further information on posting.

Wishing you a happy holiday season,

Suzanne Burr Monaco
Trumbull Town Clerk

From: Scott Wich [REDACTED]
Subject: Fwd: 2012 Town Board & Commissions Meeting Schedules
Date: January 5, 2012 3:22:06 PM EST



From: Patricia Zablocky [REDACTED]
Sent: Saturday, December 03, 2011 10:16 AM
To: [REDACTED]; 'Heather Lusebrink'; Gail Bokine; 'Margaret Mastroni'; 'Donna Cassidy'; JoAnne Veltri; 'Christina Pereiro'; Barbara Crandall; Scott M. Wich; 'Christine Plumeau'; 'Joanne'; 'Joan Plouffe'; Phyllis Collier; Helen Granskog; [REDACTED]; Diane Donahue; Amy DeZenko; [REDACTED]; 'Pam Georgas'; 'Joyce Augustinsky'
Cc: Daniel Nelson
Subject: 2012 Town Board & Commissions Meeting Schedules

Greetings and a Happy Holiday Season to all! How quickly this year has flown by!

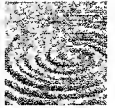
A bit of business to keep in mind as you hold your December meetings...In order to be in compliance with the CT FOI Act, **all 2012 Board & Commissions meeting schedules must be posted on the Town website no later than January 31st.** Please send your 2012 Meeting Schedules to me and I will post them for you on the Town website and to the Town Meeting Calendar for the year.

If you would be so kind, please also take a moment to visit the Town website at www.trumbull-ct.gov to review your respective Boards & Commissions web page (On the menu: Town Hall > Boards & Commissions > Choose your Board) and let me know if any information there is inaccurate or incomplete. As a resource to residents, I would like to include the names and email addresses of all Board members. If your Board members are willing to provide that information, just send it on to me and I will update the Town website accordingly.

If ever I can be of any assistance to you, please let me know. Enjoy this Holiday Season!

Best Regards,
Patti Z.

From: Scott Wich [REDACTED]
Subject: **Fwd: 2012 Boards & Commissions Meeting Schedules**
Date: January 5, 2012 3:21:25 PM EST



From: Patricia Zablocky [REDACTED]
Sent: Saturday, December 31, 2011 6:57 AM
To: [REDACTED]; 'Heather Lusebrink'; 'Donna Cassidy'; 'Christina Pereiro'; Scott M. Wich; 'Joanne'; 'Joan Plouffe'; Helen Granskog; Diane Donahue; 'Margaret Mastroni'; [REDACTED]
Subject: 2012 Boards & Commissions Meeting Schedules

As a reminder as we begin 2012...

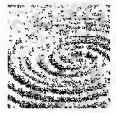
In order to be in compliance with the CT FOI Act, **all 2012 Board & Commissions meeting schedules must be posted on the Town website no later than January 31st.** Please send your 2012 Meeting Schedules to me and I will post them for you on the Town website and to the Town Meeting Calendar for the year.

If you would be so kind, please also take a moment to visit the Town website at www.trumbull-ct.gov to review your respective Boards & Commissions web page (On the menu: Town Hall > Boards & Commissions > Choose your Board) and let me know if any information there is inaccurate or incomplete. As a resource to residents, I would like to include the names and email addresses of all Board members. If your Board members are willing to provide that information, just send it on to me and I will update the Town website accordingly.

If ever I can be of any assistance to you, please let me know. Wishing you a Happy, Healthy & Prosperous New Year!

Best Regards,
Patti Z.

From: Scott Wich [REDACTED]
Subject: Fwd: Appointments to the Economic and Community Development Commission
Date: January 5, 2012 3:20:44 PM EST



1 Attachment, 233 KB

From: Timothy M. Herbst [mailto:therbst@trumbull-ct.gov]
Sent: Monday, December 19, 2011 5:02 PM
To: Scott M. Wich; [REDACTED]
Cc: Daniel Nelson; [REDACTED] Suzanne Burr Monaco
Subject: Appointments to the Economic and Community Development Commission

Dear Scott:

I returned from vacation late last week and have had the opportunity to review a multitude of correspondence, including emails sent to members of the commission and my Chief of Staff.

I believe Patti misinterpreted my letter to her. In my letter, I indicated that I would consider her for appointment to the commission in 2012. When I referenced appointment in 2012, I meant one of the seats that will open in December of 2012 - one year from now. I have elected to honor the recommendation of the Republican Town Committee as it relates to Patti's seat, Karl Mizak's seat and the vacancy created by David Rutigliano's resignation. Those three seats have been filled, the appointments have been certified in the Town Clerk's office and the oath of office has been administered. Bill Haberlin, Gary Bean and Evelyn Zmary have been appointed to the ECDC.

I will consider Patti for one of the three seats that will open next year (December of 2012). For the record, the current members of the ECDC are Wick, Abraham, Ginis, Kaufman, Sather, Berg, Bean, Haberlin and Zmary.

I have had the opportunity to review the letter sent to you last week by the Town Clerk, as well as your response of earlier this afternoon. I also went down to the Town Clerk's office to inspect what documents, if any, have been recorded in her office (i.e. agendas and meeting minutes). I believe the ECDC has serious issues as it relates to properly filing agendas and meeting minutes in the Town Clerk's office. On its face, I believe there are some serious violations of the Connecticut Freedom of Information Act. The commission and its individual members could be the subject of a complaint to the Freedom of Information Commission in Hartford. This situation needs to be abated as soon as possible.

Chapter VII, Section 24 of the Town Charter states, "Every board, commission or committee shall keep an accurate record of its acts, votes, meetings and proceedings. Such records shall be public and shall be open for inspection as provided by the General Statutes." While it would appear that there is a statutory violation, there is a potential Charter violation as well.

The Trumbull Economic and Community Development Commission should not only follow the Town Charter, but state statutes and Robert's Rules of Order like all other elected and appointed bodies of the Town. This is governed by Chapter VII, Section 21 of the Town Charter.

The lack of protocol and adherence to public notice requirements is further highlighted by the recent change in the chairman of the commission. One member of a commission does not have the authority to name an acting chair. This is in contravention to the intent of Chapter VII, Section 21 of the Town Charter. When a chairman resigns, the vice chairman assumes the chairmanship, absent any internal rules, adopted by the entire commission, which provide otherwise. When the Vice Chairman refused to accept the Chairmanship, there should have been another election, in accordance with Robert's Rules.

I believe we need to schedule a special meeting for next week (December 28, 2011) to address the issues referenced above. Going forward, the commission needs to make sure it conducts its business in accordance with the Connecticut General Statutes, the Trumbull Town Charter and Robert's Rules of Order.

Sincerely,
Tim Herbst